

**204 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CRM-M-43815 of 2021

Date of Decision : December 14, 2021

Sandeep Singh @ Nikku

.... Petitioner

vs

State of Punjab

.... Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present : Mr. Manpreet Singh Dua, Advocate for the petitioner.

Mr. Bhupender Beniwal, AAG, Punjab.

SURESHWAR THAKUR, J. (Oral)

1. FIR bearing No.91 of 17.09.2019, constituting therein an offence embodied under Section 22 of Narcotic Drugs and Psychotropic Substances Act, 1985, is registered against the petitioner-bail applicant at Police Station Sadar Rajpura, District Patiala.

2. From the alleged conscious, and, the exclusive possession of the accused-bail applicant, recovery of 130 vials of, Buprenorphine injections became effected, at the site of occurrence, by the Investigating Officer. The FSL in its report appended to the petition, as Annexure P-2 has made an opinion, that on making an analysis of the samples, as became, send to it, 0.260mg/ml of Buprenorphine Hydrochloride was found in the samples concerned. Since the total haul, of the recovered phsycotropic substance (supra), as became effected at the site of occurrence, from the alleged conscious, and, exclusive possession of the accused/bail applicant by Investigating Officer concerned, rather comprises of 130 vials, and, each weighs 260 ml.

3. Further when it is stated by the learned counsel for the State that in each of the vials occur 2ml., of the prohibited salt. Therefore, upon multiplying (130x2=260 ml.), the weight of the total haul, comes within the ambit of commercial quantity.

4. Though the learned counsel for the petitioner submits, that only the pure content(s) of the prohibited salt (supra) was to be taken into account for the relevant purpose. However, the aforesaid contention, cannot be accepted, as the Hon'ble Apex Court has made a verdict, that not only the pure content of recovered narcotic drug or of any prohibited salt, as, occurring in the recovered narcotic drug or psychotropic substance, is to be borne in mind for making relevant contemplation, rather the gross weight, hence respectively of the seized narcotics drug, and, or of the psychotropic substance, is to be rather borne in mind, in determining the total weight of the seizure. Consequently, the entire or gross weight of each of the vials concerned, is to be taken into account, and, when as afore stated, the entire or the gross weight of the entire bulk of seizure i.e. of 130 vials, rather falls within commercial quantity thereof. Therefore, thereons the rigour of Section 37 of the NDPS Act becomes applicable, and, thereupon, this Court is barred from granting the facility of bail to the bail applicant-petitioner.

5. During the course of arguments being addressed, before this Court, the learned counsel for the petitioner, has emphasized, upon the deteriorating health condition(s) of the bail applicant in jail, and, therefore, he contended, that he be released on health grounds. Consequently in view of the order of this Court passed on 27.10.2021, this Court had directed the Chief Medical Officer, District Patiala to place on record a report qua the

health condition of the bail applicant. In pursuance to afore made order, learned State counsel has placed on record, the report as made by the Medical Board concerned, after its making an examination of the health condition of the bail applicant. The relevant paragraph is extracted herein under:

“Sandeep Singh is suffering from chronic disease HIV, HCV and mild osteoarthritis ® Knee. Although he is stable on medication but still he need regular treatment and follow up.”

6. Since the ailment of the bail applicant, is curable either within the premises of the jail or outside the premises of the jail, inasmuch as there is no occurrence, of any recital in the report (supra), that only if the bail applicant is personally attended upon, at his home, by his close relatives, thereupon alone his ailment shall improve. Consequently, for lack of the afore opinion becoming not placed before this Court, by the CMO concerned, therefore, this Court is constrained to not grant bail to the petitioner, on the ground of his deteriorating health condition, in jail, as his health condition is curable either though medication being provided to him, within the premises of the jail or his being provided medication, even at hospitals outside the jail where he can be taken to, for his ailments being cured.

7. Dismissed.

(SURESHWAR THAKUR)
JUDGE

December 14, 2021

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Whether Speaking/Reasoned	:	Yes
Whether Reportable	:	Yes